

FILED  
APR 4 2007  
CLERK OF DISTRICT COURT  
PORTLAND, OREGON

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

CHERYL BARRER and WALTER  
BARRER, on Behalf of Themselves  
and Those Similarly Situated,

Plaintiffs,

Civil No. 06-415-HU

vs

ORDER

CHASE BANK, USA, N.A. and DOES  
1 THROUGH AND INCLUDING 100,

Defendants.

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HAGGERTY, Chief Judge:

Magistrate Judge Hubel has issued a Findings and Recommendation [43] in this action. Its relevant portions recommend that defendants' Motion to Dismiss [12] be granted, and if that recommendation is not adopted, defendants' alternative Motion to Compel Arbitration [12] be granted.

Plaintiffs filed objections to the Findings and Recommendation and the case was referred to this court. When a party objects to any portion of a Magistrate's Findings and Recommendation, the

district court must make a *de novo* determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Business Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Plaintiffs' objections were filed in a timely manner. The court has given the file of this case a *de novo* review, and has also carefully evaluated the Magistrate's Findings and Recommendations, the objections, and the entire record. Magistrate Judge Hubel provided a thorough analysis of the facts and circumstances regarding this litigation, and this analysis need not be repeated here. This court has considered plaintiffs' objections and concludes that the Findings and Recommendation is sound, correct, and entitled to adoption.

## **ANALYSIS**

Plaintiffs argue that the Findings and Recommendation erred because it failed to consider defendant Chase's lack of disclosure in the Card Members' Agreement (CMA) that Chase might engage in "adverse action re-pricing," or raising previously preferred rates after evaluating information in a consumer's credit report. Pls. Obj. To Findings and Recommendation at 5-6.

The Findings and Recommendation did, however, consider this issue. The Findings and Recommendation acknowledged that defendant Chase is required to "set out the terms of the CMA in a meaningful, clear and conspicuous manner." Findings and Recommendation at 9. The Findings and Recommendation next reviewed two provisions in a CMA Chase issued in 2004 and concluded that those provisions "do not explicitly disclose that Chase has reserved to itself the right to change [interest rates charged] in response to perceived risks obtained from credit report reviews." However, the Findings and Recommendation then recognized that a CMA sent to plaintiff Walter Barrer in the summer of 2002 explicitly stated as follows:

We may obtain consumer credit reports from credit bureaus [about] you at any time in the future. We may use the reports and their contents, as well as information about your Account including its payment and/or usage history and your other relationships with us and our affiliates, to review your Account including for the purposes of determining its eligibility for Preferred rates and of establishing the Non-Preferred rates that may apply to your Account.

Findings and Recommendation at 9-10, n.4, (citing Supplemental Barrett Declaration, Exhibit B p. 9).

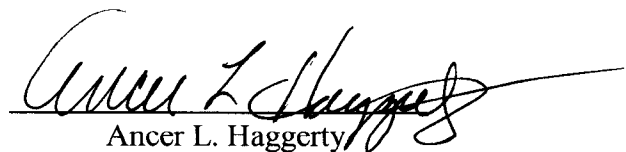
Plaintiffs' objections that the Findings and Recommendation erred in concluding "that the terms of the 2004 CMA and the February 2005 Change in Terms Notice expressly advised plaintiffs of Chase's right to change the terms on which it chose to extend credit . . . and of the fact that it had changed those terms on the basis of the Barrers' credit report" are rejected. Findings and Recommendation at 13. The Findings and Recommendation reasoned correctly that defendant Chase is not required to disclose "all factors, events or circumstances that could be used in deciding whether to raise a card holder[s] interest rate." *Id.* This reasoning applies equally to plaintiffs' objections regarding the notices provided by Chase in February 2005. Because the recommendation to dismiss is adopted, this court need not reach plaintiffs' objections to the Findings and Recommendation's alternative recommendation regarding whether to compel arbitration.

## CONCLUSION

The Magistrate Judge's Findings and Recommendation [43] is adopted as follows: defendants' Motion to Dismiss [12] is granted.

IT IS SO ORDERED.

Dated this 4 day of April, 2007.

  
Ancer L. Haggerty  
United States District Judge